



**PUBLIC MEMORANDUM
REGARDING THE
OFFICER-INVOLVED DEATH OF VOLNE LAMONT STOKES**

**CPRC CASE NO. 03-043
RPD CASE NO. P3-03-147-240**

I. Introduction

The Community Police Review Commission ("Commission") is charged with promoting the "effective, efficient, trustworthy and just law enforcement in the City of Riverside, and to bring to the attention of the City its findings and recommendations in regard to law enforcement policies and practices." Since its inception in April 2000, one of the ways the Commission has fulfilled this charge is by releasing its investigative findings in the form of a Public Report to the City. The purpose of this Public Memorandum is to explain to the public and the policy makers of the City of Riverside why the Commission decided not to issue a Public Report regarding the officer-involved death of Volne Lamont Stokes ("Stokes").

II. Factual Summary of Commission's Actions

In the past, the contents of the Commission's reports to the public regarding officer-involved deaths were very limited in scope and detail. This occurred because the Commission's investigation included the review of information generated by both the Riverside Police Department's ("RPD") criminal investigators (Officer-Involved Shooting Team or "OIS Team") and administrative investigators (Internal Affairs or "IA"). Because of state personnel laws, the information disclosed to the Commission by the RPD's Internal Affairs Unit was deemed confidential personnel information. Consequently, it was determined that information could not be disclosed to the public if the Commission had reviewed the Internal Affairs report prior to issuing its public report, even if that information was also contained in the criminal casebook.

In an effort to improve the Commission's transparency and increase its ability to publicly disclose and discuss the information that it has learned, the Commission decided in the spring of 2003 to revise the sources of information it would use to generate its public report. At that time, the Commission decided that from that time forward it would base its public report on information generated by RPD's Shooting Team, the Commission's own investigator, the public, and other public sources of information. The Commission decided that it would only review the reports generated by Internal Affairs after the public report had been generated. It was the Commission's intent to generate a supplemental internal report if new or additional facts were subsequently learned.

The Stokes shooting was the first officer-involved death investigation to take place after the Commission's policy change. As will be discussed in greater detail below, RPD failed to follow its own written policies on the methods and timing that its investigative personnel were to utilize while conducting separate criminal and administrative investigations. The RPD shooting team investigators did not obtain a statement from Officer Tina Banfill. Rather, when the investigators and Officer Banfill could not reach agreement on where to conduct an interview, she was directed to the Internal Affairs office where a compelled statement was taken. The compelled statement is a privileged personnel document, which the Commission has not reviewed for this report. Once commissioners read the compelled statement, they can no longer publicly discuss any information contained in that report.

As a result of this failure, Officer Tina Banfill ("Officer Banfill"), a key witness to the Stokes shooting, was not interviewed by the OIS Team before speaking with the Internal Affairs investigators. Since the OIS Team did not interview Officer Banfill, a complete and thorough criminal investigation of all the facts surrounding the events of the Stokes shooting was not provided to the Commission.

In an effort to become knowledgeable regarding the key details of this shooting, the Commission made two requests that Officer Banfill be interviewed privately with the Commission's investigator. When these requests were declined, the Commission, for the first time in its history, utilized its subpoena power. In both of her appearances before the Commission, Officer Banfill elected to exert her Fifth Amendment right to not incriminate herself with her own statements.

On December 22, 2004, the Commission decided not to issue a Public Report on the Stokes shooting. The reasons articulated by the majority for not issuing a report are twofold. First, they did not feel comfortable issuing a report when the first officer on the scene – and the only person who could speak directly about the "how" (and in some areas, the "why") of the events leading up to the shooting unfolded as they did – declined to be interviewed by the OIS Team. Since this information is ostensibly contained in the IA report, the Commission was uncomfortable speculating on the "how" and "why."

Second, and more importantly, the Majority of the Commission felt that by not issuing a Public Report, the public and the policy makers would focus more attention on two separate but interrelated issues: (a) the "how" and "why" the investigation didn't follow the Department's policies and procedures by obtaining a statement from Officer Banfill, and (b) the "how" and "why" after the criminal investigations by RPD and the Riverside County District Attorney's Office had concluded, this officer was able to subsequently decline to discuss her actions about the taking of a life of a citizen of Riverside while acting in the course and scope of her duties as a City employee and still remain a City employee without answering questions. The Commission felt that these issues needed to be brought to public view and action taken to help prevent this from happening again. It was the Commission's belief that issuing a Public Report would not allow an opportunity for public conversation on this issue.

On January 12, 2005, the Interim City Manager requested the Commission to reconsider its decision not to issue a Public Report. The Commission discussed the matter further and again, by a majority vote, decided not to issue a Public Report. However, the Commission did agree its reasoning, as well as certain factual issues surrounding the shooting investigation and its aftermath, could be of assistance to any further consideration or debate by the public and the policy makers. As a result, the Commission then voted to issue this Public Memorandum. As such, this document will provide the public and the City's policy makers with as many of the underlying facts, circumstances, and reasoning as the Commission was allowed to collect.

The sources for this memorandum are the RPD criminal investigation report released by the District Attorney's Office, third-party witness interviews conducted by the Commission's contract investigator, and documents on file with the Riverside Superior Court.

III. Factual Summary of Shooting

On Tuesday, May 27, 2003 at about 1:06 p.m., Riverside Police Officers Tina Banfill and Adam Brown ("Officer Brown") were dispatched to the intersection of Esperanza Street and Marguerita Avenue, which is in the vicinity of Riverside's Ysmael Villegas Community Center. The dispatch was the result of a citizen's call to the RPD about a suspicious person sitting inside a vehicle at that location.

Officer Banfill arrived at the location about 1:41 p.m. Stokes was seated in a 1997 silver Acura on the west side of Esperanza Street, facing south. Officer Banfill parked her police vehicle on the north side of Marguerita Avenue facing west.

It appears that Officer Banfill walked up to the left side of the vehicle and made contact with Stokes while he was still inside his vehicle. It is unknown by the Commission what conversation, if any, took place between Stokes and Officer Banfill.¹

Shortly thereafter Stokes got out of his vehicle and began advancing on Officer Banfill. Stokes had a knife in his right hand and a screwdriver in his left hand. Both were held in the vicinity of his chest and pointed forward.

At this time, approximately 1:42 p.m., Officer Brown arrived from the east on Marguerita Avenue and exited his vehicle. As Stokes advanced on Officer Banfill, both officers yelled at him to drop the weapons.

Stokes turned from Officer Banfill and advanced on Officer Brown, all the time with both officers continuing to shout commands at him. When Stokes was about 10 feet away from him, Officer Brown fired three or four shots. Officer Banfill also fired her weapon at Mr. Stokes.

Stokes fell down and then tried to stand up. Both officers continued to shout commands at him. Stokes dropped the knife, but continued to hold the screwdriver as he then collapsed back on to the ground. Officers Banfill and Brown approached Mr. Stokes and Officer Brown kicked the knife away.

Stokes never spoke during the time he was outside his vehicle. The officers called for medical aid, which arrived at 1:49 p.m. Stokes was pronounced dead at 2:20 p.m.

The police recovered eight shell casings, one bullet fragment, a knife, and a screwdriver from the street. One round was recovered from a residence.

Stokes, who had been living with his sister and her husband, had stolen their car. The vehicle had been reported stolen and was in the DMV system as such at the time of the shooting.

¹ Observational Footnote: Based on the observed resting positioning of her police car and transmission records with Police Dispatch, it appears that Officer Banfill did not properly position her car relative to the Stokes vehicle and did not run the license plate of Stokes' vehicle for wants or warrants before she exited her car and walked up on the vehicle Stokes was sitting in. For the reasons discussed below, it is unknown by the Commission why Officer Banfill parked her vehicle in the location she did and why she didn't first do a check of the license plate of Stokes' vehicle before approaching it.

As part of the OIS Team's investigation in the hours immediately following the Stokes shooting, Officer Banfill was asked to give a statement regarding the shooting to the OIS Team. Officer Banfill was offered the opportunity to be interviewed by the OIS Team, write a report, or dictate a report pursuant to RPD Policy 4.8.C.2.e.1.e. Officer Banfill indicated she wanted to be interviewed rather than write or dictate a report. This interview was to take place with two investigators in an RPD interview room that was wired with an audio and video feed. This room is known and referred to internally as the "Blue Room." Officer Banfill refused to give a statement to detectives conducting the criminal investigation in the Blue Room.

The reasons given by Officer Banfill for the refusal were (1) she was uncomfortable giving a statement in the very same room often used by RPD officers to interview suspects; and (2) the room allowed others outside the room to observe what would be taking place inside the room without her knowledge in violation of the Police Officers' Bill of Rights.

Without taking sides in a labor management issue of who gets to decide where an interview is to be conducted, the Commission observes that the failure to reach agreement on an interview location or in the alternative, for Officer Banfill to write or dictate a report as provided by policy, resulted in the public forever being in the position of not knowing what Officer Banfill had to say about her observations and actions. The Commission is unable to say whether there was good reason for Officer Banfill to park her car where she did, to not run the license plate of the subject vehicle, or to wait for backup to arrive before approaching Mr. Stokes vehicle.

Officer Banfill was subpoenaed on October 27, 2004 and then again on December 22, 2004 by the Commission. On both occasions, Officer Banfill asserted her Fifth Amendment right not to offer any testimony that could incriminate her.

Officer Brown gave a statement to the criminal investigators. His statement, and that of civilian witness Ronald Joseph Maldonado are the primary sources of information regarding the events leading up to and including the shooting.

IV. Areas of Concern

A. The Failure of the OIS Team to get a statement from Officer Banfill.

RPD Policy No. 4.8.C.2.e.1.e (Referring to interviews by the Officer Involved Shooting Team) states in part: "Involved employees will be advised he/she may write an accurate and complete police report, dictate such a report, or provide a complete and accurate statement to investigators."

RPD Policy No. 4.8.C.2.f.4 (Referring to interviews by the Internal Affairs Investigators) states: "Interviews with witnesses, suspect(s) or involved employee(s) will not be conducted until after they have been interviewed by the Officer Involved Shooting Team."

It is the opinion of the Commission that the investigators response to Officer Banfill's refusal to be interviewed by the OIS Team in the Blue Room was contrary to the RPD Policy and Procedure. While RPD policy provided the investigators several other options to conduct their investigation and obtain a statement from Officer Banfill, she was instead directed to the Internal Affairs Office to give her compelled statement to the Internal Affairs investigators. As discussed above, the failure of Officer Banfill and the OIS Team to reach some agreement on obtaining a voluntary statement as provided by policy resulted in the opportunity to obtain a non-compelled statement for

the review of the criminal investigators, the District Attorney's office, and this Commission being forever lost.

B. The Failure of the OIS Team and the IA Investigators to get their own separate statement from Officer Banfill.

RPD Policy Nos. 4.8.C.2.e.1 and 4.8.C.2.f.1 require the Officer Involved Shooting Team and Internal Affairs to conduct separate investigations: one criminal, one administrative.

After the review of several earlier officer-involved shootings, the Commission came to the conclusion that only one interview is being used to produce the criminal and administrative reports. In several instances, the Internal Affairs report was not a separate investigation as the Commission believes is required by RPD Policy, but merely a review of the OIS Team's investigation.

In response to the 2003 shooting death of Anastacio Muñoz, the Commission sent a policy recommendation to the RPD addressing the above issues. The recommendation points out that the Commission believes the RPD was not in compliance with RPD Policy Nos. 4.8.C.2.e.1 and 4.8.C.2.f.1, which require the Officer Involved Shooting Team and Internal Affairs to conduct separate investigations (see Attachment #1 [1205cprc.rec 02-124 Munoz 4.8]).

In the Stokes shooting investigation, Officer Banfill was directed by the OIS Team to give her statement to Internal Affairs before they had completed their own separate investigation, which includes obtaining their own statement from Officer Banfill.

Without the knowledge of the contents of the Internal Affairs report, but with the knowledge that a criminal investigation of the statement of Officer Banfill never took place, these facts leave the public to question, "What actually did take place?" which defeats the goal of making RPD's actions as transparent as possible.

C. The Failure of Officer Banfill to give her statement to the Commission

City Ordinance No. 6516, Section 2.76.050 (A) & (H) states in pertinent part: "The powers, duties and functions of the Community Police Review Commission are...to advise the Mayor and City Council on all police/community relations issues; to review and advise the Police Department in matters pertaining to police policies and practices."

City Ordinance No. 6516, Section 2.76.050 (D) also states that the powers, duties and functions of the Commission are to review and investigate the death of any individual arising out of or in connection with actions of a sworn police officer, regardless of whether a complaint regarding such death has been filed.

RPD Policy No. 4.8.C.2.e.1.e states in part: "Involved employees will be advised he/she may write an accurate and complete police report, dictate such a report, or provide a complete and accurate statement to investigators."

A duty of the Commission is to review and provide advice to City policy makers on police policy and procedure issues and to facilitate such a role, they were vested with

the power to review and investigate officer-involved deaths. It is the Commission's belief that, as a part of performing its duty to investigate the actions of officers who cause the death of another, it must have the ability, if and when necessary, to interview the officers involved in the matter being investigated.

RPD policy requires its employees to provide a complete and accurate statement to "investigators." While not specifically stated, it is presumed that an officer's obligation is also to provide complete and accurate statements to other appropriately sanctioned reviewing agencies or entities (such as the District Attorney's Office, the state Department of Justice, the Federal Department of Justice), not just those from the RPD. Now, based on the power delegated to it by ordinance, the Commission should be included in that list.

The Commission understands that it is not charged with the determination of whether a crime has been committed by an officer. However, the Commission believes that if it is necessary to inquire of an officer about specific policy and procedure issues surrounding an officer-involved death, then it is important that a protocol be established to provide for such an inquiry.²

The Commission invites the policy makers of this city to consider providing it with a mechanism similar to a compelled interview used by the Internal Affairs investigators. This way, the Commission may gather policy and procedure information with there being some form of consequence for the officer's non-cooperation.

V. Summary and Conclusions

After the shooting death of Volne Stokes, the OIS Team attempted to interview Officer Banfill to obtain a complete and accurate accounting of her involvement. Officer Banfill did not want to be interviewed in the "Blue Room" because, as she states, she was aware of the audio and video feeds into other areas of the building. An officer being interviewed in a criminal investigation has a right to full disclosure of the names, rank, and interest of each person present according to the Public Safety Officers' Bill of Rights. After she refused to be interviewed in the "Blue Room," the OIS Team chose not to conduct the interview in another room.

The public expects that an officer-involved shooting will be investigated with the highest level of quality and professionalism by the Riverside Police Department, the District Attorney's Office, and the City Attorney's Office. The Commission believes that the Riverside Police Department's failure to follow its own policies and procedures in this case does not live up to this expectation. The Commission is concerned that circumstances resulted in a criminal investigation that provided the Commission with insufficient information to discharge its duties effectively.

Again, the Commission does not take sides in determining whether labor or management gets to determine where an interview should take place. We do express our frustration that the failure of the parties to reach an accommodation resulted in the present circumstance where the Criminal Investigators, the Commission, and the public do not know what Officer Banfill's statement would have contained.

² Observational Footnote: a review of the list of questions the Commission intended to ask Officer Banfill will demonstrate the Commission's intent to understand her application (or failure to apply) certain tactical policies and procedures of the RPD before the shooting took place. A copy of that list of questions is attached as Attachment #2.

VI. Attachments

A. Attachment #1

The Commission's policy recommendation to RPD Policy and Procedure 4.8.

B. Attachment #2

The Commission's list of questions for Officer Banfill.

ATTACHMENT #1

COMMUNITY POLICE REVIEW COMMISSION POLICY RECOMMENDATION

RPD POLICY AND PROCEDURES 4.8

INVESTIGATIONS OF OFFICER INVOLVED SHOOTINGS AND INCIDENTS WHERE DEATH OR SERIOUS LIKELIHOOD OF DEATH RESULTS:

Rationale for the Policy Recommendation:

During an investigation into the officer-involved death of a civilian, the Community Police Review Commission noticed what appears to be a practice on the part of the Internal Affairs unit to that is different than that required by Riverside Police Department Policy 4.8, Subsection C.2.f, 1 & 3, as the Commission reads that policy:

4.8.C.2.f. Internal Affairs shall:

1. The Internal Affairs Lieutenant shall be responsible for conducting an independent investigation.
2. Inform the Chief of Police or his/her designee with regard to the information obtained in the course of their investigation.
3. All Internal Affairs Investigations shall be separate from the investigation conducted by the Officer Involved Shooting Team. Information obtained from the Officer Involved Shooting Team will be used to aid the Internal Affairs Investigation. No information obtained from a compelled interview will be disclosed to the Officer Involved Shooting Team.
4. Interviews with witnesses, suspect(s) or involved employee(s) will not be conducted until after they have been interviewed by the Officer Involved Shooting Team.

The Commission believes that the Internal Affairs unit is producing a “review” of all of the actions of all of the officers on the scene as opposed to an “independent investigation” as seems to be required by policy.

This belief is based on the fact that the Internal Affairs unit calls its work product an “Administrative Review” and that this work product contains no document that was produced solely in IA with the exception of a section also called “Administrative Review.” In the instant case, there were no independent witness or officer interviews or other work typically associated with an investigation as opposed to a review.

Also, the work product fits the dictionary definition of a “Review” in every way.

Another aspect of the document is that, contrary to Subsection 3 that states "Information obtained from the Officer Involved Shooting Team (OIST) will be used to aid the Internal Affairs Investigation," the Administrative Review relies exclusively on information found in the OIST report for its documentation.

Finally, the Commission believes that when the department does not conduct a true "Independent Investigation," it loses the benefit of a system of checks and balances that is built into the current policy framework.

Policy Recommendation:

The Community Police Review Commission has identified that the Riverside Police Department has two options:

A. It can require the Internal Affairs unit to conform to current policy as written in RPD Policy and Procedures 4.8.C.2.f and produce true Independent Investigations,

Or

B. It can re-write RPD Policy and Procedures 4.8, Subsection C.2.f so that it conforms to the current practice of reviewing actions taken by the O.I.S.T. and others involved with the case.

The Community Police Review Commission recommends that Option A be followed without fail.

Mike Gardner, Chair
Community Police Review Commission

Date

ATTACHMENT #2

Questions for Officer Banfill

As was stated in the introduction to this memorandum, the Commission is unable to make any definitive findings on this case due to the fact that there are many unanswered questions concerning the manner in which Officers Brown and Banfill responded to this call. It is evident that only the officers who responded to this call can answer these questions. While the statement of Officer Brown was provided to the Commission, the key statement of Officer Banfill as to what took place between her and Mr. Stokes before and immediately after Officer Brown appeared on the scene is absent due to the fact that Officer Banfill asserted her fifth amendment right not to offer any testimony that could incriminate her.

As such many questions remain unanswered. These include:

1. How did you come to be at the intersection of Marguerita and Esperanza on that date?
2. What did you observe as you approached to the scene in your car?
3. Did you immediately identify the car and subject (Stokes) as the subject of the call?
4. Did Mr. Stokes make eye contact or indicate in any way that he was aware of your presence as you approached his vehicle?
5. What did Stokes say, if anything, when you arrived at his car door?
6. When did you first notice the knife and screwdriver that he eventually got out of the car holding?
7. What was Mr. Stokes' demeanor prior to getting out of his car?
8. Did Mr. Stokes' demeanor change when Officer Brown arrived on the scene?
9. As you pulled to the location where you eventually parked, did you have contact of any kind, with any person other than Mr. Stokes?
10. What information had you received from the dispatcher prior to your arrival on the scene?
11. Did Mr. Stokes say anything to you and or Officer Brown before or after he got out of his car?
12. When did Stokes drop his knife and when did he drop his screwdriver?
13. Was there anything about the call that made you uneasy or suspicious?
 - a. Did you hear dispatch say, "Unknown if correct plate?"
 - b. Why did you park where you did?
14. Who was the control officer and who was the cover officer?
 - a. Could you explain those roles to the Commission?
15. Did you know Officer Brown's ETA? If so, how?

16. Did you exit your vehicle immediately upon arrival?
17. Did you walk directly toward the driver's side door, or did you circle in one direction or another?
18. As Mr. Stokes was in the car could you see his hands?
 - a. Where were they?
 - b. Was there anything about his hand movement that made you uneasy?
19. Was his window up or down?
20. Was his car running?
21. What was the weather like – hot?
22. Did you give Mr. Stokes any verbal commands while he was still in the car?
23. How much time elapsed from when you got to the vicinity of his car and the time he got out?
24. When Mr. Stokes got out, how far away from his door were you?
 - a. At what angle to his door were you?
25. Describe how he was holding the knife and screwdriver.
 - a. Were they up?
 - b. Pointed toward you?
 - c. Threatening in some other way?
26. After he got out of the car, what did he do?
27. If he was walking toward you, did he seem focused on you?
28. How fast was he walking?
 - a. Was he walking *directly* toward you?
 - b. Did he have eye contact?
29. Were you giving verbal commands?
30. Describe your movement.
 - a. Were you walking backwards?
 1. How fast?
31. At what point did you draw your pistol?
 - a. How far away from you was he at that time?
32. Was there any change in his demeanor after you drew your pistol?
33. At what point did Officer Brown arrive?
34. From what direction did he come?
35. Did it appear that after Officer Brown arrived Mr. Stokes changed his focus from you to Officer Brown?

36. What did Officer Brown say to Mr. Stokes?
37. Did Officer Brown talk to you?
38. Did you talk to Officer Brown, before shots were fired?
39. After Officer Brown arrived was there any change in the movements of Mr. Stokes?
 - a. Was there any apparent change in his demeanor?
 - b. Did he say anything to Officer Brown?
40. Who shot first, you or Officer Brown?
41. Describe (diagram) where you were, where Officer Brown was, both police vehicles, and where Mr. Stokes was at the time the first shot was fired.
42. When you fired, how far away from Mr. Stokes were you?
43. In what direction was Mr. Stokes going when you fired?
44. When you fired, were you looking at Mr. Stokes at an angle, such as at his left side?
45. How many rounds did you fire?
 - a. Were they in rapid succession, or were there pauses between rounds?
 - b. What was your point of aim?
 - c. Did you have a sense of what was down-range?
 1. Did you perceive any crossfire issues?
46. Could you see rounds striking Mr. Stokes?
 - a. Where on his body?
 - b. Whose rounds?
47. What did Mr. Stokes do after the shooting started?
 - a. Describe whether he fell forward or backward, or both.
48. Did he at any time say anything, or make any other verbal noises?
49. Would you have handled the call differently if Dispatch had told you:
 - a. The vehicle was reported stolen;
 - b. The suspect was possibly armed with a knife;
 - c. The suspect was mentally ill.